(3)

IN THE HONOURABLE CHHATTISGARH HIGH COURT OF JUDICATURE AT BILASPUR

Criminal Appeal No. 161 **/2001.**

(CRIMINAL APPEAL U/S 374 (2) Cr. P. C. 1973)

Appellant: Denga S/o Ayatoo, aged about 32 years, R/o Samupara, Belar, Lohandiguda, Dist: Jagadalpur, Chhattisgarh.

Versus

RESPONDENT: State of Chhattisgarh through Police Station: Lohandiguda, Dist: Jagdalpur, Chhattisgarh.

09/ 2001 ..... Advocate R. to A.

Appeal u/s 374 (2) of criminal procedure code 1973 against the judgement dated 14.09.2001 delivered by the court of Additional Sessions Judge (Special Court), Jagdalpur, in Sessions Trial Case no. 434/ 2000.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH

DIVISION BENCH HON. SHRI L.C. BHADOO AND HON. SHRI DHIRENDRA MISHRA, JJ

Criminal appeal no. 161 of 2001

Appellant : Denga

Versus

Respondent : State of Chhattisgarh

Present

Mr. Shailendra Dubey, counsel for the appellant.
Mr. G.D. Vaswani, Additional Public Prosecutor for the State/respondent.

ORAL JUDGMENT
(12.12.2006)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 14.9.2000 passed by Special Judge, Jagdalpur in S.T.No. 434/00 whereby the learned Special Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to unde go imprisonment for life.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –2–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. Case of the prosecution, in brief, is that Bitai, Bai, wife of the deceased, lodged a report (Ex.P/1) in the Police Station – Lohriguda to the effect that she is the resident of village Belarsamupara, accused Denga used to divert the course of water towards his field which was objected by her husband, therefore, accused Denga used to quarrel and threaten her husband that he will kill him. On the previous day her husband came from the field and informed her that there was some quarrel with Denga in connection with irrigation water. In the evening she had gone to the house of her ailing daughter to enquire about her health, at about 7.00 p.m. when she was returning to her house, she saw that the accused was running away from her house carrying axe in his hand. When she stepped into her house she saw that her husband was lying dead in the verandah, blood was oozing out of right side of the neck. Denga has committed the murder of her husband by assaulting him with axe on his neck. After registering the First Information Report (Ex.P/1) investigation officer left for the scene of occurrence and prepared the inquest report (Ex.P/7) of the body of deceased Maso. He took into possession plain and bloodstained soil from the place of occurrence under Ex.P/4. While in police custody the accused gave memorandum (Ex.P/2) regarding the place where the weapon of offence i.e. axe was thrown

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by him, in pursuance of that he got recovered the axe under Ex.P/3. One white shirt of the accused stained with blood was seized under Ex.P/5. Dhoti of the deceased was taken into possession under Ex.P/15 which was sent for examination to the doctor under Ex.P/12-A, and the doctor opined (Ex.P/12) that the same be sent to chemical examiner to ascertain the nature of stains and the group of human blood. The clothe of the accused and the weapon of offence i.e. axe were sent to the doctor for examination under Ex.P/16 & P/17 respectively, and the doctor gave his opinion that these articles be sent the chemical examiner to ascertain the nature of stains and type if human blood. Site plan (Ex.P/13) of the place of occurrence was prepared by the investigating officer. Body of deceased Maso was sent for postmortem examination to Primary Health Centre, Lohriguda where Dr. Virendra Singh Thakur (PW-6) conducted postmortem and noticed six incised wounds on face, shoulder, skull, chest and opined that cause of death was hemorrhage and shock as a result of injury No. 1. Bloodstained and plain soil, axe, shirt of the accused and Dhoti of the deceased were sent to Forensic Science Laboratory, Raipur for chemical examination from where report (Ex.P/18) was received. After completion of usual investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur who in turn committed

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the case to the Sessions Judge, Jagdalpur. The learned Special Judge received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused examined seven witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. The accused examined two defence witnesses namely Charu (DW-1) and Sannu (DW-2) in his defence to prove that there was no dispute between the deceased and the accused in connection with irrigation water.

4. Learned Special Judge after hearing learned counsel for the respective parties convicted and sentenced the accused as aforementioned.

5. We have heard Mr. Shailendra Dubey, learned counsel appearing on behalf of the accused/appellant and Mr. G.D. Vaswani, learned counsel for the State/respondent.

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आदेश पत्रक (पूर्वानुबद्ध)

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	6. Mr. Dubey has not disputed the homicidal death of deceased Maso. Apart from that, from the evidence of PW-6 Dr. Virendra Singh Thakur who conducted postmortem on the body of deceased Maso, noticed following injuries ***Injuries noticed by Dr. V.S. Thakur (PW-6) on the dead body of Maso*** *1. incised wound with compound fracture 10 cm x 4 cm x bone deep extending from the right cheek to right side of the neck;* *2. two incised wound on the right side of the neck in the size of 10 x 2 x .4 cm and 5 x 1 x .4 cm;* *3. one incised wound on the right shoulder, bone beneath this injury was fractured, in the size of 8 x 2 cm;* *4. two incised wounds in the size of 6 x 2 x .6 cm and 5 x 1 x .7 cm. on the back of the right arm;* *5. one incised wound on the occipital region, bone beneath it was fractured, in the size of 10 x 5 cm;* *6. one incised wound beside the injury No. 5 in the size of 8 x 1 cm;* *7. one incised wound on the left side of the chest in the size of 4 x .3 x .2 cm.*	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

All the injuries were ante mortem in nature which could be caused by any hard and sharp object within 12 hours before the death. It was homicidal in nature. Death was due to injury No. 1.

He opined that cause of death was hemorrhage and shock due to the injuries particularly injury No. 1. In view of the medical evidence, the homicidal death of Maso is established.

7. As far as involvement of the accused in the crime in question is concerned, learned counsel for the accused/appellant submits that in this case the conviction rests on the circumstantial evidence. Nobody has seen the accused attacking the deceased and the evidence of PW-1 Bitai Bai, wife of the deceased, is not worth reliance that she saw the accused coming out of her house and running away from there carrying axe in his hand. He also argued that the First Information Report was lodged belatedly as the incident took place on 21.9.1999 whereas the report was lodged on 22.9.1999 at about 12.15 noon. He also submitted that as far as the circumstance of recovery of bloodstained shirt and axe is concerned, it is not sufficient to connect the accused with the crime in question particularly in the absence of any report of Serologists regarding the origin of blood found on these articles. He further

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 7 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

contended that the prosecution has not been able to establish that there was any dispute between the deceased and the accused in connection with irrigation water. He further submitted that there is no evidence to show that the deceased raised cries on being assaulted by the accused and no neighbour has been examined in the regard.

8. On the other hand, Mr. Vaswani, Additional Public Prosecutor for the State/respondent supported the impugned judgment of the trial Court.

9. As far as the question of delay in lodging the FIR is concerned, the crime in question was committed on 21.9.1999 at about 7.00 p.m. in the evening and the report was lodged by PW-1 Bitai Bai, wife of the deceased on the next day on 22.9.1999 at about 12.15 hours. As per the FIR the police station is at the distance of 9 km from the place of occurrence. The complainant being a lady whose husband was murdered was not in a position to go to the police station in the night, which was admittedly 9 km away from the place of occurrence. Even otherwise, this witness has not been cross-examined on this aspect as to whether the delay was caused in order to implicate the accused in a false crime. Therefore, the argument advanced by

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आदेश पत्रक (पूर्वानुबद्ध)

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learned counsel for the accused/appellant that the FIR was lodged belatedly with an intention to implicate the accused in a false crime is not acceptable.

10. It is true that there is no ocular evidence in this case and conviction of the accused rests on circumstantial evidence. The prosecution has tried to establish the involvement of the accused in the crime in question on the following circumstances,

(i) that there was a dispute between the deceased and the accused in connection with irrigation water;

(ii) that the accused was seen by Bitai Bai (PW-1), wife of the deceased, coming out of her house and running away from there carrying axe in his hand;

(iii) that the weapon of offence axe was seized at the instance of the accused; and

(iv) that the blood was found on the axe and the shirt of the accused.

11. As far as the first circumstance is concerned, PW-1 Bitai Bai, wife of the accused has stated that there was a dispute between the accused and her husband in connection with irrigation water. PW-3 Lakhmu, father of the

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	accused in paragraph 2 of his evidence has also stated that their agriculture fields are adjacent to the agriculture field of Maso. There was a dispute regarding irrigation water between Maso and Denga (the accused). PW-4 Gadru has also stated that the agriculture fields of Maso and Denga are adjoining and there was a dispute regarding irrigation water between the two. However, in reply to a question in this regard the accused has just said that there was no dispute with the deceased in relation to irrigation water. On the contrary, the father of the accused has categorically admitted in his evidence that there was a dispute between the two in connection with irrigation water as their agriculture fields are adjacent. Even the wife of the deceased as also stated the same thing. Therefore, there is no reason before this Court to disbelieve the evidence of the above witnesses who have admitted in their evidence that there was a dispute between the deceased and the accused in connection with irrigation water and as such, the prosecution has been able to successfully establish the first circumstance. In the presence of evidence of father of the accused the evidence of defence witnesses does not inspire confidence.	

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आदेश पत्रक (पूर्वानुबद्ध)

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12. So far as the second circumstance is concerned, there is only one witness i.e. PW-1 Bitai Bai, who has stated that on the fateful day in the evening she had gone to the house of her ailing daughter to enquire about her health. When she came back to her house, she saw that the accused was coming out of her house carrying axe in his hand. When she entered the house she saw that her husband Maso was lying dead in the verandah and blood was oozing out of his neck. Learned counsel for the accused/appellant drawing attention of this Court to the cross examination of this witness contended that this witness has stated that she does not know whether somebody else would have come to her house during the period when she left the house and before she returned, on her returning to home she saw that the accused was coming out of her house, therefore, there is every possibility of any third person entering into the house of Maso and committing his murder.

It is true that this witness in her cross-examination has stated so but so far as this defence is concerned, in the first instance the accused has himself denied his presence near the house of the deceased and also the fact that there was a dispute between the deceased and himself in connection with irrigation water whereas the dispute between the deceased and the accused regarding

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irrigation water has already been established. Bitai Bai (PW-1) has categorically stated in her evidence that she saw the accused coming out of her house carrying axe in hand and when she went inside the house she saw her husband lying dead in the verandah. Had any third person committed the crime in question, the accused could have explained his presence at the house of deceased Maso which was witnessed by Batai Bai instead of denying the same in toto, which is a strong circumstance unerringly pointing towards the guilt of the accused. Therefore, the presence of accused while coming out of the house of the deceased at the time of incident is established. Moreover, it is not the case of the accused that the deceased was having inimical relation with somebody else, therefore, any third person would have committed the murder of Maso.

13. As far as the argument of learned counsel for the accused/appellant that there is nothing on record to show that the deceased raised cries when the accused assaulted him and that no person of the neighbourhood of deceased Maso has been examined, is concerned, though the investigating officer has not been cross-examined on the point that there are some houses adjacent to the house of deceased, in the site plan (Ex.P/13) it has not been shown that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -12-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

there are some houses adjacent to the house of deceased, therefore, no inference can be drawn that the persons are residing in the neighbourhood of the deceased and they have not been examined. No such suggestion was given to PW-1 Bitai Bai in her cross examination. Thus, the argument advanced by learned counsel for the accused/appellant in this respect is of no significance.

14. As far as the recovery of weapon of offence axe at the instance of the accused is concerned, PW-2 Durjan has stated that memo (Ex.P/2) was given by the accused in his presence and in pursuance of that the accused got the axe recovered from Jodhara Badi (kitchen garden) under Ex.P/3. The memo (Ex.P/2) was reduced into writing which bears his signature from 'A' to 'A' and the seizure memo of Ex.P/3 also bears his signature from 'A' to 'A'. He has further stated that the bloodstained and plain soil from the place of occurrence was seized under Ex.P/4, the shirt of the accused was seized under Ex.P/5 in his presence. Both the seizure memos (Ex.P/4 & Ex.P/5) bear his signature from 'A' to 'A'. In the cross-examination he has stated that the accused was holding axe in the police station but in the same breath he again stated that the accused disclosed to the police that the axe is lying in

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -13-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Jodhara Badi and he brought the same from Jodhara Badi. PW-7 Albert Tirki , the investigating officer has stated that while in the police custody the accused gave memo (Ex.P/2) and in pursuance of that he got recovered the axe which was taken into possession under Ex.P/3. The bloodstained soil and plain soil was taken into possession under Ex.P/4, bloodstained Dhoti of the deceased was taken into possession under Ex.P/15, and bloodstained shirt of the accused was taken into possession under Ex.P/5. In the cross examination of this witness, the defence has not been able to elicit any circumstance which shows that the recovery of axe was not at the instance of the accused, therefore, finding of the trial Court that the axe in question was recovered at the instance of the accused does not suffer from any illegality or infirmity.

15. As far as the fourth circumstance that bloodstains were found on the axe and shirt of the accused is concerned, it is true that there is no Serologist report to suggest that the blood found on the above articles was human blood and that too of the blood group of the deceased but it is not a case where the conviction of the accused rests only on this circumstance. This is a fact that as per the F.S.L. report (Ex.P/18) bloodstains were present on the axe and

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shirt of the accused. Even PW-2 Durjan in whose presence the axe and the shirt were taken into possession, has stated that there were bloodstains on the axe and the shirt of the accused. Moreover, there is no explanation on behalf of the accused as to how his shirt was found stained with blood. Therefore, this circumstance also stands established by the other corroborating circumstances pressed into service by the prosecution.

16. For the foregoing reasons, we are of the considered opinion that the prosecution has been able to establish the complete chain of circumstantial evidence through which the only irresistible conclusion can be drawn that the accused was author of the crime in question and there is no possibility of involvement of any third person in the crime in question. Thus the finding of the trial Court regarding the involvement of the accused in the crime in question does not suffer from any illegality or infirmity.

17. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.